

## **REMARKS**

This responds to both the Office Action dated 10 April 2003, and the follow-up Office Action dated 25 September 2003. This Response supersedes and replaces the Response filed on 12 August 2003. Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and following remarks.

The claim presentation objected to by the Examiner in the 25 September 2003 Office Action is explained as follows: In the Response to Office Action dated 20 December 2002, claim 3 was amended, but was inadvertently misnumbered as claim 2. Claim 2 has, in fact, never been amended. In the Response to Office Action dated 12 August 2003, and in the above "Listing of Claims," claim 2 is correctly listed as "originally filed" and claim 3 is correctly numbered and listed as "previously amended." This should resolve all of the confusion.

New claim 42 has been added. Claims 13-29 and 34-40 have been canceled. Accordingly, claims 1-12 and 41-42 remain pending in the application.

### **Response to Restriction Requirement**

Method claims 13-29 and 34-40 have been canceled without prejudice in response to the Examiner's restriction requirement in paper number six. Applicant hereby elects to pursue apparatus claims 1-12 and 41-42 from invention I.

### **Response to Restrictions Under 35 U.S.C. § 102**

The Examiner has rejected claims 7 and 41 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,619,901 to Reese et al. Applicant respectfully traverses.

An anticipation rejection is proper only if a single prior art reference discloses each and every element recited in a particular claim. Claim 7 includes a "refrigeration

“system” element and claim 41 includes a “refrigerated foodstuffs supply line” element. The Examiner argues that the ice supply (element #19 in Figure 2) satisfies these requirements. The Applicant respectfully disagrees.

The ice supply incorporated in the blending device disclosed in Reese does not refrigerate the foodstuff supply line as required in claims 7 and 41. Rather, the ice supply is designed to supply shaved ice to the blending container 13 for inclusion in a blended beverage. The ice supply is not designed nor does it function to refrigerate the contents in the beverage receptacles 20. As shown in Figure 2, the ice supply may only include a small amount of ice and is not automatically replenished. A small amount of ice such as the one shown in Figure 2 is certainly not a “refrigeration system” as contemplated by the present invention. A refrigeration system such as a household refrigerator performs two functions. First, it cools the items in the refrigerator and second, it seals the air inside the refrigerator to maintain the enclosed area in a refrigerated state. The ice supply 19 disclosed in the Reese patent performs neither of these functions. Thus, the recited refrigeration element is neither taught nor suggested by the Reese patent.

For the reasons stated above, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 7 and 41 under 35 U.S.C. § 102.

#### **Response to Restrictions Under § 103**

The Examiner has rejected claims 1, 4-6, and 8-12 under 35 U.S.C. § 103(a) as being unpatentable over Reese et al. in view of U.S. Patent No. 6,326,047 to Farrell. Applicant respectfully traverses.

Claim 1 includes the following element: “a pump operatively coupled to the foodstuffs supply line to introduce the foodstuffs into the blending container.” The

Examiner admits that Reese does not include a pump but argues that it would have been obvious to incorporate the pump from Farrell into the device of Reese. The proposed combination fails to meet the *prima facie* case for obviousness and is therefore improper. There must be some suggestion or motivation in the prior art to make the proposed combination. The Examiner argues that the desire to free up more space in a kitchen or workplace would motivate someone to incorporate pumps into the blending device taught in Reese, yet the Examiner points to nothing that suggests such a naked conclusion.

The blending device taught in Reese clearly teaches away from the proposed combination by focusing on a gravity based beverage supply system rather than a pumping system. Reese positions the beverage containers to precisely flow into the blending container when a valve is opened. The positioning of the beverage containers relates to the **important feature** of precise portion control focused on throughout the Reese application. By allowing the beverages to flow into the blending container with gravity, the amount of beverage can be precisely controlled. The Examiner argues that Farrell teaches that pumps can be used to provide a “metered supply of liquid.” Farrell merely teaches that a pump can be used to deliver a liquid to a blending container in a blending device. The proposed combination moves away from the teaching in Reese to propose using a non-gravity based pumping system to deliver beverages into the blending container.

Farrell does not teach the use of a pumping system in a blending device in order to save space in a kitchen or workplace. Figure 5 shows a beverage container 22, a pump 26, and a blending chamber 200. The beverage container 22 is still positioned higher than the blending chamber 200 and therefore does not teach one skilled in the art

that a pump could be used to reposition the beverage container below or beside the blending device as suggested by the Examiner. Therefore, there is no motivation to incorporate the pump disclosed in Farrell with the blending device in Reese. Since there is no motivation to combine the teachings of Farrell with Reese, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 1.

Claims 4-6, and 9-12 depend from claim 1 and are therefore allowable for at least the same reasons as described above.

Claim 8 includes the following two elements:

a cleaning location sized to receive the blending container;

a cleaning liquid supply line provided at the cleaning location to **automatically** clean the blending container when placed within the cleaning location.

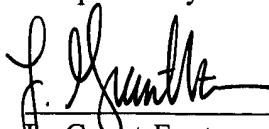
The Examiner asserts that the above elements are obvious because it would have been obvious to one skilled in the art to provide a sink with warm water from a spigot to clean the blending container in Reese. Applicant respectfully disagrees with the proposed assertion. A sink with warm water does not **automatically** clean a blending container when placed inside. Rather, a blending container must be inserted into the sink, the spigot must be turned on, and then the blending container must be physically manipulated in order to sufficiently clean the blending container. The term “automatically” means that once the blending container is inserted within the cleaning location, it is cleaned without requiring a user to perform additional steps. Since this limitation is clearly not taught in Reese, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 8.

The Examiner has rejected claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Reese et al. in view of U.S. Patent No. 6,536,224 to Frank. Applicant respectfully traverses.

Claims 2 and 3 both include the following claim element: “a water supply to **selectively and automatically** introduce water into the blending container upon request.” The Examiner asserts that the limitation is an obvious extension of Reese because of the water supply taught in Frank and the ability of the blending device in Reese to dispense beverages into the blending container. As discussed above, the term automatically means that additional steps do not need to be performed. Therefore, the phrase selectively and automatically indicates that the water supply automatically introduces a selected amount of water into the blending container. The combination proposed by the Examiner does teach the proposed limitation and therefore the rejection is improper. The Applicant respectfully requests that the Examiner withdraw the rejection of claims 2 and 3 under 35 U.S.C. § 103(a).

Applicant has made a good-faith effort to resolve all matters with respect to the present application. Applicant believes that the claims, both those presenting originally claimed subject matter and those that have been amended, should now be in condition for allowance. Applicant respectfully requests a favorable action on the merits. If there are any matters yet to be resolved in connection with this application, Applicant requests the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Respectfully submitted,



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